

ESTATE OF WILLIE ARKANAKYAK

IBLA 93-113

Decided November 22, 1996

Appeal from a decision of the Alaska State Office, Bureau of Land Management, deeming relinquishment of Native allotment application A-056062 knowing and voluntary.

Set aside and referred for hearing.

1. Alaska: Native Allotments--Alaska National Interest Lands Conservation Act: Native Allotments--Applications and Entries: Relinquishment--Evidence: Credibility--Hearings--Rules of Practice: Hearings

Where it is asserted that an applicant for an Alaska Native allotment who was unable to speak or read English relinquished his allotment at a time when he was under the influence of alcohol, but there are questions as to the credibility of the supporting evidence, it is appropriate to refer the matter to an Administrative Law Judge to convene a hearing on the question whether the relinquishment was knowing and voluntary.

APPEARANCES: Joseph R. Faith, Esq., Alaska Legal Services Corporation, Dillingham, Alaska, for appellant; Carlene Faithful, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

The Estate of Willie Arkanakyak (Estate) 1/ has appealed from the November 4, 1992, decision of the Alaska State Office, Bureau of Land Management (BLM), deeming Native allotment application A-056062 to have been voluntarily and knowingly relinquished by Arkanakyak.

1/ On Oct. 21, 1992, Bristol Bay Native Association reported that the living heirs of Willie Arkanakyak were Margaret Arkanakyak, Jimmie G. Arkanakyak, George Arkanakyak, Pavella T. Arkanakyak, Sixty M. Arkanakyak, Lydia A. Nicolai, Anuska Sears, and Donna M. Arkanakyak.

On October 26, 1961, the Bureau of Indian Affairs (BIA) filed the allotment application on Arkanakyak's behalf. ^{2/} Arkanakyak marked the application with an "X", and it was signed by two witnesses.

On January 18, 1962, BLM requested Arkanakyak to submit, by October 25, 1967, proof of substantially continuous use and occupancy for a period of 5 years. Instead, on October 19, 1967, BIA filed a relinquishment of his entry, using Form 4-621 (April 1958). BLM indicates in its answer that the form used was an official BLM form. The top part of the form, which Arkanakyak executed, stated:

I hereby relinquish to the United States all my right, title, and interest in and to Entry No. A-056062 made at Anchorage Land Office, the land being described as follows: all of the land described in that certain allotment application dated August 11, 1961, embracing approximately 90 acres, filed with the Bureau of Land Management on October 26, 1961.

This form, like the application, was signed by an "X", along with two witness signatures confirming that this was Arkanakyak's mark. One of the witnesses was Evon Aposik; the other was Jose G. Garcia, who was a realty specialist for BIA at the time. No further details of the relinquishment were placed in the record at that time. Arkanakyak died on September 16, 1970, and the case was closed by BLM in November 1978.

On May 7, 1979, the lands covered by the application were made subject to Interim Conveyance Nos. 181 and 182 to Manokotak Natives Limited and Bristol Bay Native Corporation. ^{3/}

On December 19, 1980, the Alaska Legal Services Corporation (ALSC), filed a letter advising BLM that it and BIA were attempting to contact applicants who might have relinquished their claims in order to give them an opportunity to request reinstatement of their applications if the relinquishment was not knowing or voluntary. On April 21, 1981, BLM received the affidavit of Wassillie Arkanakyak, quoted below, indicating that the relinquishment might have been made while applicant was under the influence of alcohol.

^{2/} The application was for approximately 90 acres of unsurveyed land located on Amanka Lake near Manokotak, Alaska, in secs. 21 and 28, T. 12 S., R. 59 W., Seward Meridian, and indicated occupancy since Aug. 6, 1961.

^{3/} It would thus appear that the allotment could not be granted to applicant until title to the land is reclaimed. If the Estate prevails on the question of a knowing and voluntary relinquishment and BLM finds that appellant is entitled to an allotment, proceedings would have to be instituted to reacquire title prior to adjudication of the allotment application. See Matilda Titus, 92 IBLA 340 (1986).

In April 1981, BLM reinstated the case. On August 2, 1982, a field examination of the site was conducted. The examiner was accompanied by Margarete Arkanakyak, applicant's widow, who indicated that she and applicant used the land for hunting, fishing, berry-picking, and trapping, using a tent on the land. No sign of the old tent frame was found. No signs of use were found that were man-made. However, there were natural resources to support the claimed use. Still, the BLM realty specialist concluded that "[t]here is no evidence in the casefile or gathered during the field examination to indicate that the applicant had used the subject parcel for five years. I cannot conclude from the evidence whether the applicant has complied with the requirements of 43 CFR 2561."

On November 4, 1992, BLM issued the decision here under appeal, in which it deemed Arkanakyak's October 1967 relinquishment knowing and voluntary and concluded that its reinstatement of his application had been in error. BLM ruled as follows: "The BIA is charged with the responsibility of approving or disapproving relinquishments of Native allotment applications. Since the BIA transmitted the relinquishment, with a cover memo, to the BLM, the relinquishment of Willie Arkanakyak (deceased) is considered knowing and voluntary, and sanctioned and approved by the BIA." BLM also noted that Arkanakyak did not timely file evidence of use and occupancy, supporting the premise that his relinquishment was knowing and voluntary at the time it was filed by BIA. BLM concluded that the case file was properly closed in 1967 and would remain closed of record.

ALSC, on behalf of the Estate of Willie Arkanakyak, filed a timely notice of appeal of BLM's decision. The Estate argues on appeal that BLM's decision was erroneous because Arkanakyak did not knowingly and voluntarily relinquish his allotment and that issues of fact had been presented over whether the relinquishment was knowing and voluntary, requiring an evidentiary hearing.

[1] Recent cases concerning the validity of relinquishments of Native allotment applications have arisen due to two statutes. In 1971, section 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (1994), repealed the Native Allotment Act, 34 Stat. 197 (1906), but allowed pending applications to proceed to patent. In 1980, in subsection 905(a) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a) (1994), Congress legislatively approved, subject to valid existing rights, Native allotment applications "which were pending before the Department of the Interior on or before December 18, 1971," within limitations and exceptions provided by the subsection. Among the exceptions is paragraph (6), providing that legislative approval did not "apply to any application pending before the Department * * * on or before December 18, 1971, which was knowingly and voluntarily relinquished by the applicant thereafter." 43 U.S.C. § 1634(a)(6) (1994) (emphasis added.)

The issue before us is whether Arkanakyak voluntarily and knowingly relinquished his Native allotment application. A relinquishment of a Native allotment application must be made voluntarily and with knowledge

of the applicant's allotment rights and the consequences of the relinquishment. Katherine C. (Zimin) Atkins v. BLM, 116 IBLA 305, 312 (1990); Matilda Titus, 92 IBLA 340, 343 (1986). In determining whether there is a factual issue whether the relinquishment was knowing and voluntary so as to require a hearing, we must regard as true the factual allegations made in the affidavits filed in support of a request for reinstatement. Heir of Frank Hobson (On Reconsideration), 121 IBLA 66, 69 (1991); Heirs of Linda Anelon, 101 IBLA 333, 337-38 (1988).

In considering this question, we review the evidence presented by the Estate and BLM. On April 21, 1981, BLM received the affidavit of Wassillie Arkanakyak, stating:

1. Willie Arkanakyak was my brother. He died approximately 1970.
2. Willie applied for a Native allotment, BLM serial #A-056062. Before dying, Willie and I had talked about leaving his Native Allotment Land and other property to his children to be divided equally. Willie asked me to make sure these things got taken care of.
3. I do not believe Willie would have talked with me about leaving his allotment land and dividing the land equally among his children if he thought he had given up the allotment.
4. The BLM or BIA sent me a copy of a paper marked with an X by Willie Arkanakyak. Evon Aposik signed his name to the paper as a witness.
5. The paper seems to say Willie gives up his allotment.
6. Evon Aposik once told me that he signed his name as a witness in Dillingham when Willie was asked to make his mark on the paper.
7. Evon warned me of that happening as soon as he arrived in Togiak because he said he thought Willie did not know what he was doing when he signed. Evon said he thought Willie was under the influence of alcohol. Willie had been drinking right before he marked the paper.

The Estate includes with its statement of reasons the affidavit of Margaret Arkanakyak, applicant's widow, which states, in part:

- 6) I knew that Willie applied for the land shown on the map as 35 as his native allotment. He use [sic] to mention that his land was his up until he passed away. I believe that it is still his land. Nobody at the land management ever mentioned that it

was not Willie's land. All along I knew that it was Willie's land. People from Manokotak believe that the land is Willie's native allotment. Many of the elders know that this land is Willie's.

He never said that he gave up the land. If he had given up his native allotment, I'm sure that he would have told me. I can't believe that he signed the paper attached as Exhibit B and play sold [sic] his land. I mean that he did it unthinking. I am 100% sure that he did not understand what he was doing. He was probably drinking too much at that time. He and Evon Aposik were probably drinking. They were good drinking buddies.

The Estate also filed an affidavit from Gusty Chythlook stating as follows:

3) I knew Willie Arkanakyak. I know that he could not read, write, speak, or understand English. Even his mark on his original application proves this. It was absolutely necessary for him to have a translator, who was a qualified translator, and who understood how to translate legal documents, to assist Willie Arkanakyak with any legal papers.

In its answer, BLM includes an affidavit from Jose G. Garcia, one of the two persons who witnessed Arkanakyak's signature on his relinquishment. He notes this fact and that he was employed as a BIA realty specialist when the document was signed. He states as follows:

3. Although I recognize the name "Arkanakyak," I do not fully remember the circumstances surrounding Willie Arkanakyak's execution of the relinquishment which is attached as Exhibit A. I remember that someone interpreted for Willie Arkanakyak. I do not remember who served as interpreter, but it might have been Evon Aposik since he signed as a witness. I usually had the interpreter witness documents.

4. It was my duty and practice to make sure that applicants understood what they were signing. If someone did not speak English, I would obtain an interpreter. I would not have knowingly allowed an intoxicated person to sign a document.

In its reply brief, the Estate included a supplementary affidavit of Wassillie Arkanakyak, stating as follows:

4) I remember when my brother signed the relinquishment paper. My brother Willie, Evon Aposik, and I were at the Sealn (a bar) at Dillingham, Alaska. My brother had been drinking and was intoxicated. Somebody brought a paper to him. Willie, Evon, and this other person signed the paper over at the table.

I went over and asked Willie what he had signed. He said that somebody from BIA had come over and was helping him with his native allotment land. He was helping him to confirm that it was his land. They would help him if he signed the paper.

I also talked to Evon about what was signed. Evon told me the same thing as Willie.

Later at Togiak, Evon told me that he thought Willie did not know what he was doing when he signed the paper. Evon said that he thought that Willie was under the influence. Evon is now deceased.

These statements, taken as a whole, establish sufficient doubt as to the circumstances of the relinquishment to justify referring the matter for a factfinding hearing on whether the relinquishment was knowing and voluntary. The last statement of Wassillie Arkanakyak, in particular, influences our decision. However, we also perceive questions about the credibility of that statement, including why the affiant was unable to state positively in 1981 that applicant was intoxicated at the time of the relinquishment. Also, it is unclear why Evon Aposik would be unaware of what was being signed (and would have told Wassillie Arkanakyak "the same thing as Willie") as he apparently spoke English. Finally, Wassillie Arkanakyak's and Garcia's statements conflict on the central question of whether applicant was intoxicated at the time of the relinquishment.

In these circumstances, it is appropriate to refer the matter to the Hearings Division under 43 CFR 4.415 for a factfinding hearing to resolve these questions. The Administrative Law Judge to whom the case is assigned will take evidence, and, duly considering the credibility of the witnesses, issue a decision on whether applicant's relinquishment was knowing and voluntary. In the absence of an appeal to this Board, that decision will be final for the Department.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's decision is set aside and the matter is referred to the Hearings Division as set out above.

David L. Hughes
Administrative Judge

I concur.

C. Randall Grant, Jr.
Administrative Judge

